



TELE-MEDIA CORPORATION

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September 29, 1993

Via Federal Express

Federal Communications Commission
Office of the Secretary
1919 M Street, Room 222
Washington, DC 20554

92-266 /

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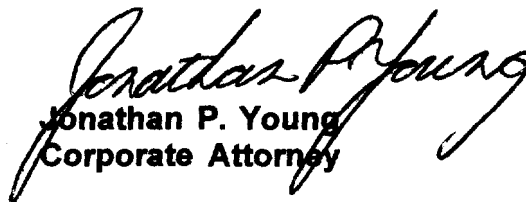
RE: Tele-Media Corporation Comments in Response to Third Notice of Proposed Rulemaking

Ladies and Gentlemen:

Enclosed please find an original and nine copies of comments filed on behalf of Tele-Media Corporation in response to the Third Notice of Proposed Rulemaking.

Should there be any questions, please do not hesitate to call.

Sincerely yours,


Jonathan P. Young
Corporate Attorney

Enc.

cc: Jon A. Allegretti
Allen C. Jacobson, Esq.
Steve E. Koval

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

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Washington, DC 20554

SEP 30 1993

In the matter of:

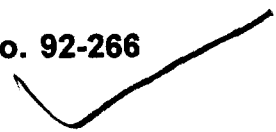
Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

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FCC - MAIL ROOM

MM Docket No. 92-266



THIRD NOTICE OF PROPOSED RULEMAKING

COMMENTS

Tele-Media Corporation

Date: September 30, 1993

Introduction/Background

The Tele-Media organization, ("Tele-Media") was founded in October 1970 by two cable pioneers, Robert E. Tudek and Everett I. Mundy. Messrs. Tudek and Mundy still actively participate in the overall operation and management of the companys' cable systems. Tele-Media is a Multiple System Operator ("MSO") with approximately 450,000 equivalent basic subscribers. Tele-Media operates approximately 170 cable systems in 17 states. Of the 170 systems, 87 (or over half) have less than 1,000 subscribers, meeting the criteria for a small system set forth in the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act"). Another 50 systems have between 1,000 and 3,499 subscribers. These numbers represent almost one-half of Tele-Media's subscribers. Historically, Tele-Media has either acquired or originally built lower density, rural systems and is typical of many small and medium sized operators in the cable industry.

I. Adjustment to Capped Rates Because of an Addition or Deletion of Channels.

Tele-Media is in agreement with the Commission's approach to the adjustment of capped rates because of an addition or deletion of a channel. We feel that requiring that the new permitted per channel rate be the existing permitted per channel rate adjusted for programming expense is a fair and logical strategy under the benchmark approach to rate regulation. Tele-Media respectfully requests, at this time, that the Commission continue to review and

revise the benchmarks previously set forth to more accurately reflect the realities of providing cable service to the types of communities that Tele-Media serves, the lower density rural systems.

II. The Commission Must Provide Procedures To Allow For Fair Hearings and Review By All Regulators and to Meet the Business Needs of Cable Operators.

Since the passage of the Cable Act and throughout the re-regulation process Tele-Media has made a sincere and concerted effort to comply with not only the language but the spirit of the Cable Act and FCC Rules, as well. Throughout, Tele-Media recognized that Congress' intent was to provide subscribers with a low-priced, entry level of cable television service ("Lifeline"). Our position has never changed with respect to what we considered a mandated obligation, although the FCC has developed a tier-neutral position with regard to pricing. We have priced our services accordingly. Tele-Media does not agree that a cable operator's incentive to offer only broadcast, PEG and low priced channels on the basic level of service necessarily outweighs the Cable Act mandate to provide Lifeline service. The cable industry has changed and the programming channel options have increased significantly since the inception of cable; However it is still central to the industry that cable operators provide high quality broadcast television signals to those people who are unable to receive any off-air or unable to receive any signals of quality. To the best of our ability, Tele-Media has structured its service offerings to take into account

competitive and complimentary public policies. As stated above, in most cases we are still offering a Lifeline package and we have complied with the FCC decision to require tier-neutrality in our pricing structure.

In our systems, where rates are currently in line with the benchmarks we intend to continue providing service in most, if not all, of those cases at the benchmark on a tier-neutral basis. In situations, where our costs are extraordinary, we have structured our pricing on a tier-neutral basis intending to justify our rates with a cost of service showing at both levels of service. There are some situations, however, where a business decision has been made to continue offering a lower priced (at the benchmark), Lifeline service and try and recover some costs at the cable programming services level. While it is impossible to rebut the Commission's tentative findings and conclusions, it is Tele-Media's position that the arguments evaluated and dismissed by the Commission are valid. There must be a mechanism to allow for those cases where different rate justifications (benchmark and cost of service) are necessary at each different level of service. There are communities in the country where this may be desirable to both the franchising authority and the cable subscribers. The proposed FCC rule must make allowances for those situations where an operator is not "gaming" the process, rather the operator is trying to provide for the needs of the community. An example is the classic cable communities of this country. Subscribers in these places are still desirous of receiving a very basic level of broadcast service, at a low price; especially long time cable

subscribers who are frequently most interested in broadcast network fare and regional and local news, and not the luxury of additional satellite cable channels. In other cases it is simply a public relations nightmare for a cable operator to raise the rate of Lifeline service when it has been provided at a discount level for years where it is wanted and needed by the community. In these cases the benchmark level of pricing on the Lifeline service provides these subscribers with the ability to receive what they need at a very fair rate and at the same time allows the operator the ability to, at most, recover the costs of providing that level of service. While it is true that the programming on the Lifeline level of service may be less expensive than on the tier, it is also true that the fixed costs of providing such cable service to a subscriber are similar whether one is dealing with a basic only subscriber or a subscriber receiving the entire package. In other words while the basic only subscriber may pay more for a lower cost channel, they are paying rates reflective of the costs of providing cable service to them.

An exception to the Commission's proposal should be based on the following factors: The needs of the community, requirements and demands of local franchising authorities and special situations where requiring operators to provide service on a tier-neutral basis without separate means for rate justification might cause the operator irreparable harm.

The Commission should continue to rely upon established procedures for review by the Commission of local decisions to assure that rate determinations

for different tiers are consistent with Commission Rules. Coordinated efforts at regulation by local franchising authorities and the Commission and giving considerable weight to or allowing a decision reached by the first regulating authority to govern creates a number of potential problems for cable operators. This becomes an even more critical issue should the FCC decide that the determination of the regulatory body first regulating the operator should govern each level of service. Any such policy is contradictory with the Cable Act, which has clearly established two separate and independent levels of oversight of the Cable Industry. In addition, the FCC effectively removes a level of review from the process. The FCC is no longer a forum for review of a local franchising authority determination, it is a participant in the initial determination of rates and consequently is not a source of independent review.

If the FCC determines that coordination of local and federal regulation is appropriate under the Cable Act, additional protection must be provided to operators in those cases where an appeal of local franchising authority/FCC rate decision must be made. The most effective way to do this, especially since the initial level of review would be to the Federal District Court which, conceivably, is a longer waiting period, should be to place the difference between present operator rates and rate determined by the local franchising authority and/or the Commission in an interest bearing escrow account, pending the outcome of the review. Should the FCC follow the proscribed procedure of rate rollbacks, a court hearing taking more than a couple of months to be scheduled and heard

could result in a significant amount of lost revenue even if the court finds in favor of the operator. What was initially a local franchising authority determination on Lifeline Service, subject to fairly fast review is now potentially a review applicable to all service packages and consequently greater potential lost revenue per subscriber, over a significantly longer period of time. There is no mechanism built into the system for the operator to recoup revenues lost pending an appeal, and even if there was, back-billing subscribers would be a real nightmare for operators and would exacerbate an already bad situation. Refunds, with interest, is a much better option for all concerned.

III. The Costs of Upgrades Required by Local Franchising Authorities Should Be Granted External Treatment to be Determined by Local Franchising Authorities.

Frequently, the decision to upgrade a cable system is made at the request of the local franchising authority and as a condition of granting a franchise renewal, extension or consent to the transfer of the franchise upon the sale of a system. The considerations involved in the planning of an upgrade are complex and are an integral part of the negotiations between the franchising authority and the cable operator. Upgrade considerations include when the upgrade should begin, when it must be completed, and what the upgrade should entail. Throughout the entire process, there is a balance between the wants and needs of the subscribers, (the constituents of the franchising authority) and the realities of operating a cable system. The franchising authority has, presumably,

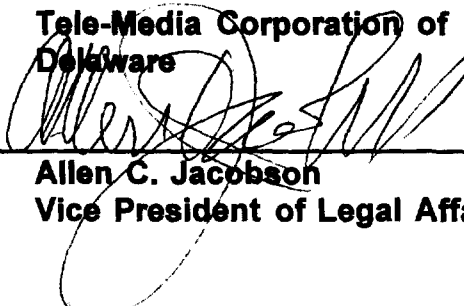
taken the business concerns of the operator into account as the negotiations are completed and the franchise renewal, extension, etc. granted. In many cases, when it is not practical from a purely business perspective, a franchising authority may suggest a way in which to complete an otherwise impractical upgrade to best serve both the subscribers and operator. The agreement reached between the operator and the franchising authority, based on the environment as it exists on the date the agreement is entered and in consideration of expectations for the future. No franchise, in effect today, and requiring upgrades, contemplated the drastic changes that have taken place in the cable industry since the passage of the Cable Act.

Because the upgrade has been negotiated between the cable operator and franchising authority and because the benchmarks do not consider an upgrade scenario, upgrade costs should be treated as an external cost to the benchmarks, subject to the discretion of the franchising authority. In addition, as stated above, the franchising authority has the best understanding of the wants and needs of the community and best understands the business realities of a particular cable operator.

Respectfully Submitted,

Tele-Media Corporation

**By: Tele-Media Corporation of
Delaware**

**By: 
Allen C. Jacobson
Vice President of Legal Affairs**